## Remarks

Claims 1 and 10 have been revised, and new Claims 11-23 have been added.

Applicants provided a Preliminary Amendment in this case, prior to the filing of a CPA pursuant to 37 C.F.R. 1.53(d). However, as discussed with the Examiner on March 6, 2003, Applicants did not refile the Preliminary Amendment in the CPA, and the February 26, 2003 Office Action does not reference it, so those revisions are introduced here, together with additional revisions. Applicants apologize for any confusion, and respectfully traverse the rejections in the Office Action (of the old, unrevised Claims 1-10 only) for the reasons provided below.

Clarifying revisions to the specification have been made. The revisions are believed to be fully supported by the specification as originally filed, and no new matter is believed to have been introduced.

A "clean" version of the amended claims was previously submitted with the Preliminary Amendment in the parent case, and is resubmitted here.

**The Section 112 Rejection**

The term "may share" has been changed to "shares," which is believed to render moot the indefiniteness rejection.

**The Section 103 Rejection**

Claims 1-10 (prior to revision) were rejected as obvious over Lloyd (USPN 4,876,648) in view of Iezman. Applicants respectfully traverse this rejection in light of the revised claims and the following remarks.

Lloyd integrates the conditions of a traditional fixed rate mortgage with additional

security provided by an investment vehicle such as a universal life policy (col. 8, lines 59-61). Applicant agrees with the Examiner that Lloyd does not disclose the use of an equity participation mortgage obligation, and also does not disclose that a lender shares in a predetermined percentage of realized appreciation on subsequent sale of the asset which is the subject of the mortgage (page 6 of Office Action).

Iezman discloses a shared appreciation mortgage (SAM) in which the lender guarantees that at maturity[1] it will refinance the outstanding principal plus the full amount of contingent interest if the borrower has not sold or transferred the property securing the loan prior to maturity (page 42, second column, lines 13-17). This leads to financial results which are very different from the claimed invention, as shown by the following working example, in which a SAM according to Iezman is used for a $200,000 home mortgage, as compared to an equity participation mortgage (EPM) according to the present invention. As can be seen, at year 10 the SAM borrower is required to refinance in the amount of $252,076.42, while the EPM borrower according to the present invention owes only $66,667 in future periodic payment obligations, given the assumptions indicated, including escalating real estate prices. Were the SAM borrower able to refinance the $252,076.42 at 8% interest, she would face 360 monthly payment obligations of $1854.17 for a total of $667,501.20 in principal and interest. Payment schedules for this example are attached as Tab A.

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[1] **It is worth noting that prior art SAM approaches have traditionally required a maturity date to guarantee compensation to the lender by a fixed time. However, the mortage system of the present invention does not require a maturity date (see paragraph bridging pages 14-15 of application) because the lender obtains ongoing compensation through the Post-Amortization Period Return after amortization has been completed but prior to the asset sale date.**

Working Example

| SAM | EPM |
|---|---|
| 200K mortgage at 8% interest w/ 10 yr balloon on maturity (4% deferred interest due at 10 yr), 30 yr payment schedule, so $176,916.94 in payments due over 10 years (120 payments of $1,467.53) | 200K mortgage; principal on 15 yr payback schedule; Maximum stated compensation (%/ total appreciation on underlying home) |
| $152,662.24 is interest paid to year 10 ($176,916.94-$24,254.70) | In year 10, borrower will owe: $66,667 in remaining principal (only if house sold at year 10) |
| Average principal outstanding = 0.5 * $152,662.24= $76,331.12 (at maturity) | |
| Refinanced amount at year 10 = $175,745.30 - $76,331.12 = $252,076.42 | |

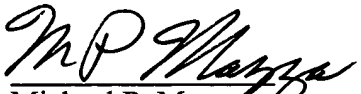
Iezman also discloses a SAM having a Afixed interest rate@ (page 42, first column, first line). Independent Claim 11 specifies that " prior to sale or maturity of the asset, the amount of principal paid by the borrower pursuant to the mortgage exceeds the amount of current interest paid by the borrower." Iezman fails to disclose this recited limitation.

Claim 17 recites that the lender receives capital gain tax treatment on its portion of the realized appreciation of the asset upon the asset's sale. Applicant currently believes this is the case given the EPM equity-based structure. Iezman indicates, on the other hand, that the SAM is a debt-side transaction which will not receive capital gain tax treatment since SAMs originate through financial institutions which are currently unable, by law, to own equities.

Iezman also discloses the use of "shared equity purchase programs" (SEP). With a SEP, a borrower and an investor form a joint venture, and agree to share in equity appreciation in the mortgaged asset. However, Iezman discloses that the loan made by the joint venture is still a "conventional" one (see, e.g., page 46, right-side column, third full paragraph, line 5, with interest). There is no indication in Iezman's discussion of a SEP that an interest-free loan, or a loan in which principal payments exceed loan payments prior to asset sale, is contemplated.

Accordingly, Applicant believes Claims 1-23 are in condition for allowance and requests same. If the next written communication is intended to be other than a notice of allowance of the pending claims, the Examiner is requested to contact the undersigned to discuss the case before sending any further written communication.

Respectfully submitted,



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**Serial No.: New CON of 09/298767 Application**
**Amended Specification**

Marked Copy

**Beginning at Page 5, line 17**

[The return on a mortgage, or any investment, can be measured as:

$$\frac{\text{Average Annual Profit}}{\text{Average Annual Principal}}$$

What former mortgage plans ignore is the value of maximizing the return by manipulating the denominator, annual average principal, so that it is repaid much more rapidly, and on or near a straight line amortization basis. This can only be done by removing current interest paid on outstanding principal or making it an inconsequential component of investor compensation. When this is done, even a relatively small average annual profit generation, which would be insufficient for mortgages with back-loaded returns of principal, produces a satisfactory return.

Under existing mortgage plans, the only way to speed the return of principal to the lender is by drastically increasing the size of the monthly payment, or conversely, drastically lowering the initial mortgage principal lent. Doing so either creates an unaffordable monthly payment burden, or substantially diminishes the borrower's purchasing capacity. In either case, the principal return remains significantly back-loaded and non-linear so that the average principal outstanding during the amortization period is a larger percentage of the original balance.]

The return on a mortgage, or any investment, is measured by the average annual cash flow

to the investor (adjusted for time and risk) relative to the amount initially invested. Former mortgage plans have ignored the value of maximizing the risk-adjusted return on mortgage financing by separating, as completely as possible, the compensation component of the cash flow returned to the investor from the repayment of the initial principal. By avoiding required monthly installments consisting of both compensation in the form of interest figured on the remaining principal outstanding and repayment of some portion of the remaining principal, the homeowner's current payment burden can be minimized. In addition, the separation of compensation from original principal repayment can actually expand the amount of original financing extended, thus increasing the homebuyer's purchasing capacity, as well as providing a superior risk-adjusted return to the mortgage investor.

**Beginning at Page 12, line 5**

Using the system of the present invention, then, the [EPC] EPMO permits the lender in this example to realize an average rate of return of 10.316%, which is obtained by dividing the annual appreciation of $12,895 by the average principal balance of $125,000.